

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
(U 39 E) for Authority to Increase Revenue  
Requirements to Recover the Costs to Replace  
Steam Generators in Units 1 and 2 of the Diablo  
Canyon Power Plant.

Application 04-01-009  
(Filed January 9, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING AND DENYING MOTIONS TO STRIKE**

On August 12, 2004, Pacific Gas and Electric Company (PG&E) filed motions to strike the pre-filed testimonies of Jay Namson and Gordon Thompson on behalf of San Louis Obispo Mothers for Peace, Sierra Club, Public Citizen, Greenpeace, and Environment California. It also filed a motion to strike the testimony of Gary Ackerman on behalf of Western Power Trading Forum (WPTF).

Namson's testimony argues that a seismic retrofit of Diablo Canyon Nuclear Power Plant (Diablo) may be necessary to accommodate large reverse or thrust fault earthquakes, and argues that PG&E should be ordered to analyze the costs of such a retrofit for consideration in this proceeding. PG&E argues that Namson's testimony should be stricken because seismic issues are not within the Commission's jurisdiction. It also represents that the testimony is speculative and irrelevant.

Imposition of seismic requirements for Diablo Canyon is not within the Commission's jurisdiction. Therefore, the Commission does not have the authority to require PG&E to perform a seismic review of the plant design, or to

order any changes to the plant if such a review found that any changes were needed. Namson's testimony effectively asks that this proceeding be suspended while its recommended seismic review is conducted. According to Namson, such an analysis would be an extensive undertaking. This would effectively deny the application. For the above reasons, I find that Namson's testimony is beyond the scope of this proceeding, and should be stricken.

Thompson's testimony argues that Diablo will incur additional security costs due to the threat of terrorism. PG&E argues that Thompson's testimony should be stricken because security issues are not within the Commission's jurisdiction. It also represents that the testimony is speculative and irrelevant.

Imposition of security requirements for Diablo is not within the Commission's jurisdiction. However, Thompson's testimony does provide an estimate of future costs that are alleged to affect the cost-effectiveness of the SGRP. However, it does not estimate when the costs would be incurred. The relevance and weight given to this testimony are matters to be addressed in hearings. Therefore, I will deny the motion to strike Thompson's testimony.

Notwithstanding the above, I find Thompson's testimony lacking in several respects. First, it appears that most of the recommended security expenditures, if required, would be necessary to protect the spent fuel at the Diablo site even if the reactors were shut down. As such, they are costs that would be incurred whether the steam generator replacement project (SGRP) takes place or not and are, therefore, not relevant to the cost-effectiveness of the SGRP. Second, it appears that the remaining expenditures, if they occur, would likely happen before the plant ceases operation if the SGRP is not performed. If that is the case, those expenditures would not be relevant to the cost-

effectiveness of the SGRP. I expect these apparent deficiencies to be addressed in the evidentiary hearings.

Ackerman's testimony argues that PG&E should be ordered to issue a request for proposals (RFP) for alternatives to the SGRP, and that the need for the SGRP should be evaluated considering the results of the RFP. PG&E represents that the testimony is beyond the scope of this proceeding.

In his testimony, Ackerman's effectively asks that the recommended RFP process be followed before a decision is reached on the SGRP. In its response to the motion, WPTF states that is not proposing that the RFP be issued immediately, and that the timing would need careful consideration. Ackerman's testimony is effectively asking that this proceeding be suspended until its recommended RFP process is completed at some unspecified time in the future. This would effectively deny the application. Ackerman's testimony is beyond the scope of this proceeding, and should be stricken.

Therefore, **IT IS RULED** that:

1. The motion of Pacific Gas and Electric Company (PG&E), filed on August 12, 2004, to strike the testimony of Jay Namson on behalf of San Louis Obispo Mothers for Peace, Sierra Club, Public Citizen, Greenpeace, and Environment California is granted.
2. The motion of PG&E, filed on August 12, 2004, to strike the testimony of Gordon Thompson on behalf of San Louis Obispo Mothers for Peace, Sierra Club, Public Citizen, Greenpeace, and Environment California is denied.
3. The motion of PG&E, filed on August 12, 2004, to strike the testimony of Gary Ackerman on behalf of Western Power Trading Forum is granted.

Dated August 31, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting and Denying Motions to Strike on all parties of record in this proceeding or their attorneys of record.

Dated August 31, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.